

**FINAL REPORT
OF THE
WATER RESOURCES STUDY COMMITTEE**



**Indiana Legislative Services Agency
200 W. Washington St., Suite 301
Indianapolis, Indiana 46204-2789**

November 2009

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Water Resources Study Committee

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November, 2009

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

FINAL REPORT

Water Resources Study Committee

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted legislation (IC 2-5-25-5) directing the Water Resources Study Committee (WRSC) to study and may make recommendations concerning all matters relating to the surface and ground water resources of Indiana, including the following:

- (1) The usage, quality, and quantity of water resources.
- (2) Issues concerning diffused surface water, the common enemy doctrine of law, and runoff.

IC 14-25-14-2 requires the Water Shortage Task Force (WSTF) to report each year to the WRSC.

The Legislative Council assigned the following topics to the Committee:

- A. Standardization of the regulation of residential irrigation system installations (HEA 1224)
- B. Development of continuing education programs and uniform rules to preserve ground water by individuals engaged in water well drilling, pump installation, well abandonment operations, and operating wells, pumps, and abandoned wells (HEA 1224)
- C. Water rights, drainage, and utilities (HEA 1278).

II. INTRODUCTION AND REASONS FOR STUDY

The Committee met to receive the Department of Natural Resources' (DNR) annual progress report on the work of the WSTF, to receive an update on the organization of the Water Resources Task Force (WRTF), and to study other issues concerning the usage of water resources in Indiana.

III. SUMMARY OF WORK PROGRAM

The WRSC met three times during the 2009 interim. At the first meeting, held on September 9, 2009, the WRSC received DNR's report concerning the work of the WSTF and the organization of the WRTF. The committee also heard testimony pertaining to Water Nuisances and the Common Enemy Rule (HB 1278). At the second meeting, held on October 7, 2009, the WRSC continued its discussion of the Common Enemy Doctrine and heard testimony pertaining to Residential Irrigation Systems (HEA 1224) and Water Well Drilling and the Preservation of Ground Water (HEA 1224). At the third meeting, held on October 20, 2009, the WRSC adopted recommendations and the final report.

The minutes of these hearings can be found at <http://www.in.gov/legislative/interim>.

IV. SUMMARY OF TESTIMONY

WSTF Annual Report. DNR presented the WSTF annual report, as required under IC 14-25-14. The WSTF developed a model water usage ordinance for municipalities to adopt for times of water shortage. The WSTF has updated the drought trigger mechanisms used by DNR and made them more accessible to the public. The WSTF has established biological baseline flow standards for streams and guidelines for water use priorities during water shortage periods. These baselines and guidelines are used by local municipalities in setting local water priorities. DNR plans to conduct tabletop drought exercises to determine how efficiently the state can respond to drought emergencies.

Water Resources Task Force (WRTF). The WRTF plans to project future water usage needs to be used in planning for residential growth and economic development and to perform cost-benefit analyses for development or distribution of water resources. The members of the WRTF will be appointed by October 1 and begin work in January 2010.

Water Nuisances (HB 1278). Rep. Milo Smith introduced citizens whose property had been affected by water that was diverted from neighboring properties. These citizens were unable to resolve their concerns at the local level. County surveyors explained that county drainage boards were constituted to oversee regulated drains. Drainage boards are not responsible for drainage issues outside of regulated drains; thus, in most instances, the boards cannot assist individuals with storm water drainage issues. A county ordinance may be able to increase the authority of the drainage board or surveyor to deal with storm water management outside of regulated drains. The city of Columbus has storm water ordinances that might have been able to resolve some of the issues raised.

In Johnson County, if a violation of a local drainage ordinance occurs, the plan commission sends letters to the violator; however, there is rarely an incentive for the violator to make changes. Local authorities may need more enforcement power in order to effect local drainage issues. Because the approach varies from county to county, establishing a uniform manner of dealing with drainage issues might help.

Rep. Cheatham suggested the Committee recommend the following principles concerning diffused surface water issues that might be included in legislation in the upcoming session:

- Designating a local authority, such as the county drainage board, to referee if requested in diffused surface water conflicts before the cases are taken to court.
- Authorizing a local authority to make decisions in diffused water conflicts.
- Providing enforcement powers to a local authority for diffused water conflicts.

Common Enemy Doctrine. Daniel Cole, the R. Bruce Townsend Professor of Law, Indiana University School of Law - Indianapolis, discussed liability rules for diffused surface water in Indiana and provided an overview of how surface water issues are considered in other states.

Residential Irrigation Systems (HEA 1224-2009). Rep. Stemler discussed the reasons he introduced HEA 1224-2009, which established the WRTF and which proposed the topics of residential irrigation systems and water well drilling and the preservation of groundwater for the WRSC to study during the 2009 interim. Michael White, Indiana Professional Lawn and Landscape Association, presented information concerning minimizing water waste in landscape water systems.

Water Well Drilling and the Preservation of Groundwater (HEA 1224-2009). Bruce Moss,

Indiana Groundwater Association, explained that his association is interested in the preservation of aquifers and protecting public health, both of which can be negatively impacted by improperly installed or serviced wells and pumps. Currently, there is no requirement for continuing education for licensed well drillers; the Association would ask the Legislature to require continuing education for licensed individuals, with proof of the continuing education required for license renewal. In addition, the group seeks uniformity among counties for permit requirements. Kevin McCray, Executive Director, National Groundwater Association, noted that 34 states currently require continuing education for licensed well drillers and installers.

Logjam Removal. Ron McAhrn, Deputy Director, DNR, explained that small logjams or those on bridges may be removed without a permit. Larger projects require permits. Permit jurisdiction among the DNR, the Indiana Department of Environmental Management, and the Army Corps of Engineers overlap.

Rep. Bill Davis explained that logjams have caused problems for constituents, for whom the overlapping jurisdictions and lack of money to remove logjams have created problems. Troy Prescott, a Randolph County Commissioner, explained the issues in his county with logjams. Tim Acton, a citizen of Randolph County, has had problems with logjams in the Mississinewa River.

The Chair began a discussion of a possible recommendation calling for the continued cooperation between the Department of Natural Resources, Indiana Department of Environmental Management, and the Army Corps of Engineers in permitting for the removal of logjams.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

Logjam Removal. The Committee recommends that cooperation between the Department of Natural Resources, the Indiana Department of Environmental Management, and the Army Corps of Engineers in issuing permits for the removal of logjams continue so that logjams can be removed quickly.

This recommendation passed by a voice vote by the majority of the members of the Committee.

Water Nuisances. The Committee recommends the following principles concerning diffused surface water issues be included in legislation in the upcoming session:

- (1) Designating a local authority, such as the county drainage board, to referee, if requested, in diffused surface water conflicts before the cases are taken to court.
- (2) Authorizing a local authority to make decisions in diffused surface water conflicts.
- (3) Providing enforcement powers to a local authority for diffused surface water conflicts.

This recommendation passed by a voice vote by the majority of the members of the Committee.

Final Report. The final report was adopted by a roll call vote of 7 yeas and no nays.

WITNESS LIST

Tim Acton, Citizen, Randolph County

Keith Allison, Citizen

Daniel Cole, the R. Bruce Townsend Professor of Law, Indiana University School of Law - Indianapolis

The Honorable Bill Davis, State Representative

Dave Gaston, Hendricks County Surveyor and President of the Indiana County Surveyors Association

E. R. Gray, Bartholomew County Surveyor

Doug Lechner, Johnson County Surveyor

Mike Leppert, The Corydon Group

Ron McAhron, Deputy Director, Indiana Department of Natural Resources

Kevin McCray, Executive Director, National Groundwater Association

Ann Miller, Citizen, Rush County

Bruce Moss, Indiana Groundwater Association

The Honorable Milo Smith, State Representative

Troy Prescott, Randolph County Commissioner

Tony Thomas, Citizen

Michael White, Indiana Professional Lawn and Landscape Association